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Guy M. Hicks
General Counsel

July 23, 1999

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EXECUTIVE SECRETARY

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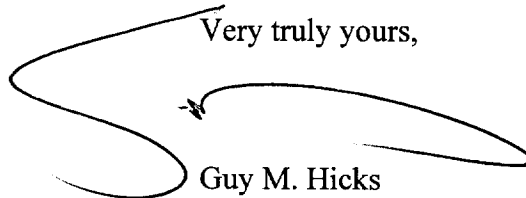
David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Proceeding for the Purpose of Addressing Competitive Effects of Contract Service Arrangements Filed by BellSouth Telecommunications, Inc. in Tennessee*
Docket No. 98-00559

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of the Direct Testimony of Randall L. Frame on behalf of BellSouth Telecommunications, Inc. Exhibit RLF-1 contains proprietary information and is being submitted under separate cover. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,



Guy M. Hicks

GMH:ch
Enclosure

1 Bellsouth Telecommunications, Inc.

REC'D TN
REGULATORY AUTH.

2 DIRECT TESTIMONY OF RANDALL L. FRAME

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3 BEFORE THE TENNESSEE REGULATORY AUTHORITY

OFFICE OF THE
EXECUTIVE SECRETARY

4 DOCKET 98-00559, 99-00210, 98-00244

5 JULY 23, 1999

6
7 Q. PLEASE STATE YOUR NAME, BUSINESS NAME AND ADDRESS

8 A. My name is Randall L. Frame. I am employed by BellSouth Business Systems. My
9 business address is 333 Commerce Street, Nashville, Tennessee 37201.
10

11 Q. PLEASE GIVE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND
12 EXPERIENCE.

13 A. I received a Bachelor of Arts degree from Northwestern State University of Louisiana in
14 1972 and a Master of Arts degree from Louisiana Tech University in 1978. I have been
15 employed in the telecommunications industry since 1979. During my career I have held
16 various positions with AT&T and BellSouth dealing with the design, sale, and
17 implementation of telecommunications solutions to end-users. I am currently assigned as
18 a Sales Manager in Nashville, Tennessee. In this assignment I supervise a group of
19 account teams who service complex business customers in middle Tennessee. Prior to
20 accepting this assignment, I was the Market Assessment Manager for BellSouth Business
21 Systems in Tennessee. In that position, I provided support to account teams selling
22 competitive services to business customers throughout Tennessee. To that end, I
23 developed information on BellSouth's competitors in this market.

1
2 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

3 A. The purpose of my testimony is to address the Contract Service Arrangements TN98-
4 2766-00 (Docket 98-00210) and KY98-4958-00 (Docket 98-00244) which have been
5 filed with the Tennessee Regulatory Authority for review and approval. My testimony
6 will show why the Tennessee Regulatory Authority (TRA) should approve these Contract
7 Service Arrangements ("CSAs"). My testimony also will respond to allegations made by
8 certain Intervenors in these proceedings.

9
10 **OVERVIEW OF CSAs**

11 Q. WHAT ARE CONTRACT SERVICE ARRANGEMENTS?

12 A. CSAs are contracts negotiated between BellSouth and retail customers. These negotiated
13 contracts provide BellSouth's retail customers with tariffed services at rates, terms or
14 conditions that vary from BellSouth's tariffs for those services.

15
16 Q. WHY DOES BELL SOUTH OFFER A CSA?

17 A. BellSouth's tariffed prices for business services generally were established some time ago
18 based upon social pricing by which business rates were set at a high level in order to
19 subsidize residential phone service. With the emergence of competition in the local
20 telecommunications market, BellSouth's business customers have a number of options
21 for local service. Taking advantage of the historical subsidy that exists in the tariffed
22 prices for BellSouth's business services, many of BellSouth's competitors offer to
23 provide local service to BellSouth's business customers at rates lower than BellSouth's

1 tariffed prices. If BellSouth is going to keep those customers, it often must agree to
2 provide service at rates less than currently offered in the tariffs, which results in the
3 offering of a CSA.

4
5 Q. ARE CSAs REALLY NECESSARY?

6 A. Yes. Like many companies in various industries, a relatively small percentage of
7 BellSouth's business customers account for a significant percentage of BellSouth's
8 revenue. CLECs, in general, are choosing to focus their efforts on business customers,
9 particularly those with sophisticated telecommunications needs located in the lucrative
10 metropolitan markets. Because CLECs provide service using comparable technology
11 and generally offer lower rates than are available in BellSouth's tariffs, BellSouth must
12 have the ability to offer a particular customer a "better deal" than the customer could
13 otherwise get from BellSouth's tariffs if BellSouth is going to keep the business. This is
14 the purpose of a CSA, which is consistent with the TRA's goal of promoting competition.
15 If BellSouth were not able to offer CSAs or were restricted in their use, the result would
16 be to unduly restrict customer choice.

17
18 Even with the ability to offer CSAs, however, CLECs have had considerable success in
19 taking business customers away from BellSouth. For example, to date, BellSouth has lost
20 some or all of the business from several large business customers, including: Nashville
21 Electric Service; University of Tennessee – Knoxville; Opryland Hotel; Tennessee
22 Titans; Shoney's; J. C. Bradford; Shop at Home; Corrections Corporation of America;
23 Speer Communications; IKON; and Memphis City Schools.

1
2 Q. HOW MUCH OF BELLSOUTH'S BUSINESS INVOLVES A CSA?

3
4 A. According to the most recent information available, revenue from CSAs in Tennessee
5 represented approximately 10.25% of BellSouth's total business revenue in the State.
6 Thus, almost 90% of BellSouth's business revenues (and 100% of BellSouth residential
7 revenues) are not subject to a CSA. I would also refer to the TRA's Report to the
8 General Assembly – The Status of Local Telecommunications Competition in Tennessee,
9 1997 – 1998, prepared by the TRA and submitted in March 1999. In Appendix C in this
10 Report, titled "Incumbent Local Exchange Companies – 1998 Statistical Data", the TRA
11 states that BellSouth had 204,115 business customers. Through the end of 1998,
12 BellSouth had 173 CSAs in place. Assuming each CSA represented a different customer,
13 only 0.085% of BellSouth's business customers (and none of BellSouth residential
14 customers) was subject to a CSA.

15
16 Q. WHAT CRITERIA DOES BELLSOUTH USE TO IDENTIFY CUSTOMERS AS
17 CANDIDATES FOR A CONTRACT SERVICE ARRANGEMENT?

18 A, BellSouth follows three basic criteria:

- 19 1. BellSouth has reason to believe that the price of service under its existing tariff
20 offering is not competitive for that particular customer;
21 2. the customer has a competitive alternative available; and
22 3. the customer is willing to sign a Contract Service Arrangement with BellSouth and
23 commit to the terms and conditions contained in the Contract Service Arrangement

1
2 **CONTRACT SERVICE ARRANGEMENT TN98-2766-00**

3
4 Q. PLEASE DESCRIBE THE CUSTOMER IN CONTRACT SERVICE ARRANGEMENT
5 TN98-2766-00.

6 A. As of year end 1998, the customer in CSA TN98-2766-00 was the 29th largest “large”
7 bank holding company headquartered in the United States, valued at over \$30 billion. Its
8 principal banking markets include a total of twelve states, served by nearly 900 local
9 offices. Subsidiaries of this customer are located throughout the United States. This
10 customer employs approximately 11,200 persons.

11
12 Q. PLEASE DESCRIBE THE TELECOMMUNICATIONS NEEDS OF THIS
13 CUSTOMER.

14 A. This customer is a sophisticated user of telecommunications services, subscribing to a
15 variety of voice services (Business Service, ESSX[®] and PBX Trunking Services), digital
16 data services (SynchroNet[®], Frame Relay, and Connectionless Data Service), and high
17 capacity transport services (MegaLink[®], and SmartPath[®] Services).

18
19 Q. DOES BELLSOUTH HAVE REASON TO BELIEVE THAT THE PRICE OF
20 SERVICE UNDER ITS EXISTING TARIFF OFFERINGS IS NOT COMPETITIVE
21 FOR THIS PARTICULAR CUSTOMER?

1 A. Yes. This customer informed its BellSouth Account Team that it had been contacted by
2 NEXTLINK, MCI and AT&T. This customer expressed a strong desire for discounts off
3 of BellSouth's tariffed rates if it were to continue to do business with BellSouth.

4
5 Q. DOES THIS CUSTOMER HAVE COMPETITIVE ALTERNATIVES IN
6 TENNESSEE?

7 A. Yes. As indicated above, several CLECs approached this customer with offers to
8 provide local telecommunications services. This information was confirmed by
9 responses to BellSouth's discovery in this case. For example, in response to BellSouth's
10 Data Requests dated July 9, 1999, Item 6, NEXTLINK stated that it has proposed to offer
11 service to this customer in the Memphis and/or Nashville local service area. NEXTLINK
12 further stated that a sales contact was made in November 1998, and other contacts may
13 (emphasis added) have been made since that date. Similarly, MCImetro states that it
14 contacted this customer about offering telecommunication services, but the customer did
15 not accept MCI's offer.

16
17 Q. PLEASE DESCRIBE THE CSA WITH THIS CUSTOMER.

18 A. Executed in April 1998, this CSA is a three-year Volume and Term (V&T) Agreement
19 that provides the customer with certain levels of discounts depending on the customer's
20 level of billing for V&T Eligible Services as identified in the CSA. The CSA provides
21 incentives for the customer to increase billing for eligible services, while preserving the
22 flexibility to modify the CSA under certain conditions.

1 Q. WHAT TELECOMMUNICATIONS SERVICES DOES THIS CONTRACT SERVICE
2 ARRANGEMENT PROVIDE?

3 A. None. Under this CSA, the customer does not commit to order any specific
4 telecommunications services or quantity of services. Again, this CSA only provides for
5 discounts based on billed revenue from eligible services as identified in the contract.
6

7 Q. HOW DOES THIS CUSTOMER ORDER TELECOMMUNICATIONS SERVICES
8 FROM BELLSOUTH?

9 A. The customer places orders for services as required under the appropriate tariff for those
10 services. All rates, terms and conditions specified under the tariffs also apply.
11

12 Q. WHAT RATE OR PRICE DOES BELLSOUTH CHARGE THIS CUSTOMER FOR
13 TELECOMMUNICATIONS SERVICES?

14 A. The rates charged to the customer are those specified in the appropriate tariffs and
15 available to any customer ordering the same services. This CSA does not modify those
16 tariffed rates in any way, but rather provides discounts based on billed revenue from the
17 eligible services identified in the contract.
18

19 **CONTRACT SERVICE ARRANGEMENT KY98-4958-00**
20

21 Q. PLEASE DESCRIBE THE CUSTOMER IN CONTRACT SERVICE ARRANGEMENT
22 KY98-4958-00.

1 A. The customer in CSA KY98-4958-00 is a large firm in the retail food and drug store
2 business, also operating food manufacturing and processing plants. This company has
3 stores and facilities throughout the Midwest and the South, including all nine states
4 served by BellSouth. The company's revenues in 1998 exceeded \$28 billion.

5
6 Q. PLEASE DESCRIBE THE TELECOMMUNICATIONS NEEDS OF THIS
7 CUSTOMER.

8 A. This customer primarily uses voice services, such as Business Service and ESSX®
9 Service, along with some transport services such as MegaLink® Service.

10
11 Q. DOES BELL SOUTH HAVE REASON TO BELIEVE THAT THE PRICE OF
12 SERVICE UNDER ITS EXISTING TARIFF OFFERINGS IS NOT COMPETITIVE
13 FOR THIS PARTICULAR CUSTOMER?

14 A. Yes. This customer informed its BellSouth Account Team that it had received
15 competitive proposals from AT&T, ACSI and Ameritech. According to the customer, the
16 savings quoted ranged from 15% to 40% off of BellSouth's tariffed rates.

17
18 Q. DOES THIS CUSTOMER HAVE COMPETITIVE ALTERNATIVES IN
19 TENNESSEE?

20 A. Yes. As indicated above, the customer received competitive proposals from AT&T,
21 ACSI and Ameritech. The presence of competitive alternatives is further confirmed in
22 responses to BellSouth's Data Requests dated July 9, 1999, Item 9. For example,
23 NEXTLINK stated that it has proposed to offer service to this customer in the Memphis

1 and/or Nashville local service area. NEXTLINK further states that a sales contact was
2 made with a single local store manager in March 1998, but the customer did not subscribe
3 to NEXTLINK's local service. NEXTLINK did not provide any reason for the
4 customer's response. Also, MCImetro states that it has contacted this customer about
5 offering telecommunication services, but the customer did not accept MCI's offer.
6

7 Q. PLEASE DESCRIBE THE CSA WITH THIS CUSTOMER.

8 A. Executed in October 1998, this CSA is a three-year Volume and Term (V&T) Agreement
9 that provides the customer with certain levels of discounts depending on the customer's
10 level of billing for V&T Eligible Services as identified in the Contract Service
11 Arrangement. The negotiated terms of this CSA provides incentives for the customer to
12 increase billing for eligible services, while maintaining the flexibility to modify the CSA
13 under certain conditions.
14

15 Q. WHAT TELECOMMUNICATIONS SERVICES DOES THIS CONTRACT SERVICE
16 ARRANGEMENT PROVIDE?

17 A. None. Under this CSA, the customer does not commit to order any specific
18 telecommunications services or quantity of services. Again, this CSA only provides for
19 discounts based on billed revenue from eligible services as identified in the contract.
20

21 Q. HOW DOES THIS CUSTOMER ORDER TELECOMMUNICATIONS SERVICES
22 FROM BELL SOUTH?

1 A. The customer places orders for services as required under the appropriate tariff for those
2 services. All rates, terms and conditions specified under the tariffs also apply.

3
4 Q. WHAT RATE OR PRICE DOES BELL SOUTH CHARGE THIS CUSTOMER FOR
5 TELECOMMUNICATIONS SERVICES?

6 A. The rates charged to the customer are those specified in the appropriate tariffs and
7 available to any customer ordering the same services. This CSA does not modify those
8 tariffed rates in any way, but rather provides discounts based on billed revenue from the
9 eligible services identified in the contract.

10
11 **CONTRACT LENGTH OR TERM**

12
13 Q. WHAT ARE THE LENGTH OR TERM PROVISIONS OF THESE CSAs?

14 A. Each Contract Service Arrangement is for three years.

15
16 Q. ARE THE LENGTH OR TERM PROVISIONS OF BELL SOUTH'S CONTRACT
17 SERVICE ARRANGEMENTS ANTICOMPETITIVE?

18 A. No. All business customers in Tennessee, when considering service options from
19 BellSouth or its competitors can choose service terms generally ranging from one to ten
20 years, depending upon the service selected. For example, the extended service
21 arrangements in BellSouth's tariffs vary in length from two to ten years. The terms of
22 BellSouth's Contract Service Arrangements range from one to seven years. BellSouth
23 finds that some of its customers prefer longer service terms when, for example, they

1 anticipate substantial and/or sustained business growth. Customers can add additional
2 services under the discount for the life of the contract.

3
4 Q. HOW DOES THE LENGTH OR TERM PROVISION OF BELL SOUTH'S
5 CONTRACT SERVICE ARRANGEMENTS COMPARE TO THE LENGTH OR
6 TERM PROVISION OF THE SPECIAL CONTRACTS OFFERED BY BELL SOUTH'S
7 COMPETITORS?

8
9 A. BellSouth cannot determine the range of terms available in the special contracts offered
10 by the other parties in this proceeding because not all of the parties have made them
11 available for inspection. However, based on the limited information available, BellSouth
12 believes that the length of the two CSAs at issue in this proceeding are comparable to the
13 length of special contracts offered by BellSouth's competitors.

14
15 For example, in response to the May 7, 1999 letter from the Tennessee Regulatory
16 Authority requesting summaries of all CLEC special contracts, AT&T indicated that it
17 had ten special contracts in place with service terms ranging from one to three years. One
18 of these special contracts is one year in length; three are two years in length; and six are
19 three years in length. In addition, AT&T produced numerous other special contracts
20 during discovery, a number of which have three-year terms.

21
22 Time Warner indicated that it had forty-three special contracts in place in Tennessee.
23 One of these special contracts is month-to-month; six are one year in length; seven are

1 two years in length; twenty-seven are three years in length; and two are five years in
2 length.

3
4 US LEC indicated that it had four special contracts in place, three of which are one-year
5 in length and one of which is two years in length. However, BellSouth has determined
6 that US LEC is also providing service to a Tennessee customer under a five-year special
7 contract offered in response to a public bid.

8
9 Q. HAS BELLSOUTH ADDRESSED THE CONCERNS OF THE TENNESSEE
10 REGULATORY AUTHORITY WITH RESPECT TO THE LENGTH OR TERM OF
11 ITS CONTRACT SERVICE ARRANGEMENTS?

12 A. Yes. Director Greer previously expressed a concern about CSAs with a term greater than
13 three years. The service terms of BellSouth's CSA are individually negotiated to meet
14 the business needs of its customers. However, in response to Director Greer's concern,
15 BellSouth is proposing CSAs with terms not exceeding three years to Tennessee
16 customers.

17
18 **PRICING**

19
20 Q. IS THE PRICING OFFERED THROUGH BELLSOUTH'S CSA ANTI-
21 COMPETITIVE?

22 A. No. BellSouth offers Contract Service Arrangements in response to the competitive
23 alternatives available to its customers. These competitive offers are often priced

1 substantially below the rates filed in BellSouth's tariffs, as is the case with the two CSAs
2 at issue. However, BellSouth ensures that the discounts offered under those contracts do
3 not result in the discounting of services below costs. The information establishing that
4 the two CSAs do not result in BellSouth selling services below cost is proprietary and is
5 being submitted under separate cover as Exhibit RLF-1 to my testimony.

6
7 Q. DURING THE COURSE OF THIS PROCEEDING, HAS THE TENNESSEE
8 REGULATORY AUTHORITY EXPRESSED A CONCERN THAT THE PRICING
9 PROVISION OF BELL SOUTH'S CONTRACT SERVICE ARRANGEMENTS IS
10 ANTI-COMPETITIVE?

11 A. No. As far as I am aware, pricing has not been an issue with either the TRA or its staff.
12

13 Q. ARE THESE CSAs DISCRIMINATORY?

14 A. No. BellSouth has repeatedly stated that it will offer these CSAs or any other CSA to any
15 similarly situated customer.
16

17 Q. DOES THE FACT THAT THE DISCOUNT STRUCTURES IN THESE TWO CSAs
18 VARY CONSTITUTE DISCRIMINATION?

19 A. No. The discounts vary because they are the result of customer-specific negotiations.
20 These negotiations involve extensive discussions between the customers and BellSouth
21 and implicate numerous issues. The negotiations also must address each customer's
22 unique business priorities and the unique mix of services (quantity and type) utilized by
23 each customer.

1
2 While the CSA provides discounts on billed revenue and not directly on the rates for
3 specific services, BellSouth must look at the eligible tariffed services provided to each
4 customer. For each CSA, the maximum discount is determined by the tariffed rates and
5 supporting cost for each service, since the maximum discount under any Contract Service
6 Arrangement must not have the effect of discounting the tariffed rate for any specific
7 service below cost. Therefore, if one customer has tariffed services that are priced closer
8 to their supporting costs than the specific services of another customer, the maximum
9 discount could vary even though the total billed revenue for both customers was
10 essentially the same. This is the case with the two CSAs at issue.

11
12 Q. WHY IS THIS NOT DISCRIMINATORY?

13 A. Although I am not a lawyer, the discount on billed revenue is determined by the specific
14 service mix for each customer as described above. Because these customers have a
15 different product mix, they are not similarly situated such that BellSouth can lawfully
16 offer the customer different discounts and revenue commitments.

17 **TERMINATION LIABILITY**

18
19 Q. ARE THE TERMINATION PROVISIONS OF BELL SOUTH'S CONTRACT
20 SERVICE ARRANGEMENTS ANTI-COMPETITIVE?

21 A. No. The termination provisions of the two CSAs at issue were individually negotiated to
22 meet the business needs of both customers as well as BellSouth. They are reasonable and
23 do not constitute a "penalty" should the customer decide to terminate the CSA early.

1
2 Q. HOW DO THE TERMINATION PROVISIONS OF BELLSOUTH'S CONTRACT
3 SERVICE ARRANGEMENTS COMPARE TO THOSE OF BELLSOUTH'S
4 COMPETITORS?

5 A. BellSouth cannot fully compare the early termination provisions of its CSAs with those
6 contained in the special contracts of its competitors because not all the parties have made
7 their contracts available for inspection. However, based on the limited information
8 available, BellSouth believes that the termination provisions of the two CSAs at issue are
9 similar to if not more lenient than comparable provisions offered by BellSouth's
10 competitors.

11
12 AT&T/TCG CSAs produced in response to discovery incorporate termination liability
13 provisions from AT&T/TCG tariffs. For example, AT&T/TCG's tariff for its PrimePlus
14 Service includes the following termination liability provisions (TN R. A. No. 1, Section
15 4.4.B):

16 Customers who discontinue service prior to the end of their term
17 commitment will be assessed an early termination charge equal to
18 their average monthly usage charges times the number of months
19 remaining on their term commitment.
20

21
22 AT&T/TCG's tariff for its PrimeXpress network service includes the following tariff
23 termination liability (TN R.A. No. 1, Section 4.7.3):

24 Upon the Customer's discontinuance of PrimeXpress facilities
25 prior to the expiration of the agreed-upon term, the termination
26 liability with regard to facilities will be equal to the monthly
27 charge times the number of months remaining on the contract –
28 discounted for present value of 6%.

1
2
3 WorldCom's Tennessee Tariff No. 2, Section 2.7 includes a provision stating that the
4 Customer's termination liability shall be equal to

5 all unpaid nonrecurring charges expended by Company to establish
6 service plus any disconnection, early cancellation or termination
7 charges reasonably incurred and paid to third parties by Company
8 on behalf of Customer, plus all recurring charges specified in the
9 applicable service order for the balance of the then-current term
10 discounted at a rate determined by the Tennessee Regulatory
11 Authority minus a reasonable allowance for costs avoided by the
12 Company as a direct result of Customer's cancellation.
13
14

15 MCI's TRA Tariff No. 2, Page No. 71.1.3, Section 3.1.6.2, provides for termination
16 charges equal to the customer's highest billed monthly charges incurred during the length
17 of the term commitment multiplied by the number of months remaining in the customer's
18 Term Plan.

19
20 Time Warner's Tennessee Tariff No. 2, Section 2.13.2 provides that if a Customer
21 terminates services before the completion of the term for any reason other than a service
22 interruption, the customer agrees to pay all recurring charges specified in the applicable
23 service order tariff for the balance of the then-current term.

24
25 NEXTLINK's Tariff Local Exchange Service TRA No. 1, Section 2.7.2 similarly
26 provides that if a customer cancels services before the completion of the term, the
27 customer agrees to pay all recurring charges specified in the applicable service order tariff
28 for the balance of the then-current term.
29

1 Q. HAS BELL SOUTH ADDRESSED THE CONCERNS OF THE TENNESSEE
2 REGULATORY AUTHORITY WITH RESPECT TO THE EARLY TERMINATION
3 PROVISIONS OF ITS CONTRACT SERVICE ARRANGEMENTS?

4 A. Yes. The Directors have voiced concerns about the early termination provisions of
5 BellSouth's volume and term Contract Service Arrangements. BellSouth has addressed
6 these concerns by developing a standard formula for calculating termination liability and
7 incorporating that formula into its Volume and Term Contract Service Arrangements
8 proposals to customers. As part of this new termination language, the customer agrees to
9 refund certain discounts. The TRA has approved several Contract Service Arrangements
10 containing this revised termination language.

11
12 Q. HAS BELL SOUTH PROPOSED THIS REVISED TERMINATION LANGUAGE TO
13 THE CUSTOMERS OF THESE TWO CSAs?

14 A. Yes. The customer in CSA KY98-4958-00 accepted this revised termination language as
15 indicated in the Amendment to this Contract Service Arrangement, signed in April 1999.
16 However, the customer in CSA TN98-2766-00 declined to accept this revised language.

17
18 Q. WHY DID THE CUSTOMER in CSA TN98-2766-00 DECLINE THE NEWER
19 TERMINATION LANGUAGE?

20 A. While it is difficult for BellSouth to speculate about why the customer declined to accept
21 the newer termination language, it appears that the termination charges specified in the
22 original negotiated language would not exceed the termination charges calculated under
23 the proposed termination language. In fact, over the range of discounts specified in this

1 Contract Service Arrangement, the termination charges under the original negotiated
2 language could be less than those under the newer language.

3
4 Q. WHAT DOES THE TERMINATION PROVISION IN CSA TN98-2766-00 PROVIDE?

5 A. The termination language appears in Section IX of the CSA, a copy of which is attached
6 to my testimony as Exhibit RLF-2. This language is clear and straightforward. Basically,
7 termination of the Contract Service Arrangement at the end of a contract year triggers a
8 flat charge. Termination at any other time triggers additional charges as described in
9 Paragraph B of this Section.

10
11 Q. WHY DOES THIS LANGUAGE DIFFER FROM THE LANGUAGE DEVELOPED
12 BY BELL SOUTH TO ADDRESS THE TRA'S CONCERNS?

13 A. The original language in the Contract Service Arrangement was negotiated with the
14 customer prior to development of the newer termination language. As previously
15 explained, BellSouth offered the newer language to the customer, but the customer
16 declined. The fact that the customer did so seriously undermines those who claim that
17 BellSouth can somehow impose its will upon its customers.

18
19 Q. WOULD THE TERMINATION CHARGE UNDER CSA TN98-2766-00 BE
20 EXCESSIVE?

21 A. No. These terms were negotiated with and agreed to by the customer. In addition, the
22 termination charge calculated under this original provision is equal to or less than the
23 charges produced by the revised language proposed to the customer, which the TRA has

1 previously adopted. As a result, termination charges under this provision could hardly be
2 called "excessive."

3
4 **OTHER CONTRACT TERMS**

5
6 Q. PLEASE DISCUSS SECTION XIII – RATE ASSURANCE IN CSA TN98-2766-00.

7 A. A copy of this provision is attached to my testimony as Exhibit RLF-3. Basically, this
8 language represents an agreement by the customer to notify BellSouth of any proposal for
9 a V&T Eligible Service that is priced within 15% of BellSouth's price for the same
10 services. BellSouth then has a specified period of time to respond to this proposal. If
11 BellSouth does not respond, or its response is not within 10% of the alternative, then
12 BellSouth agrees to modify the Contract Service Arrangement to reflect the customer's
13 purchase of that service from another provider.

14
15 Q. DOES THIS PROVISION APPEAR IN ALL 'V&T' CONTRACT SERVICE
16 ARRANGEMENTS?

17 A. No. This provision was negotiated by this particular customer.

18
19 Q. WHY DID THE CUSTOMER WANT THIS PROVISION IN THE CSA?

20 A. The customer apparently felt that that it may receive additional proposals from
21 competitors in the future, and it wants the flexibility to take advantage of those proposals
22 either by receiving lower rates from BellSouth, or moving service from BellSouth to the
23 lower-priced competitor.

1
2 Q. WHY DID BELLSOUTH AGREE TO THIS PROVISION IN THIS SPECIFIC
3 CONTRACT SERVICE ARRANGEMENT?

4 A. BellSouth agreed to this provision as part of the negotiations with the customer.
5 BellSouth had to accept this language in order to secure an agreement with the customer.
6 The only other alternative was to lose this customer's business. Again, this provision
7 demonstrates that CSAs are very much the product of negotiations between BellSouth
8 and the customer and that BellSouth cannot simply dictate contract terms to its
9 customers.

10
11 **EFFECT OF CSAs ON COMPETITION**

12
13 Q. DO BELLSOUTH'S CONTRACT SERVICE ARRANGEMENTS PRECLUDE
14 BELLSOUTH'S CUSTOMERS FROM OBTAINING PRODUCTS OR SERVICES
15 FROM OTHER TELECOMMUNICATIONS PROVIDERS?

16 A. No. These two CSA customers may choose any other competitive service providers in
17 addition to BellSouth. They may purchase telecommunications services from BellSouth
18 or its competitors in any combination that meets their business needs.

19
20 Q. DO THE CONTRACT SERVICE ARRANGEMENTS REQUIRE THE CUSTOMER
21 TO ORDER SERVICE EXCLUSIVELY FROM BELLSOUTH?

22 A. No. There is no provision in either Contract Service Arrangement that requires the
23 customer to order or to retain telecommunications service exclusively from BellSouth.

1
2 Q. DO THE CONTRACT SERVICE ARRANGEMENTS RESTRICT THE CUSTOMER'S
3 ABILITY TO RECEIVE, CONSIDER AND ACCEPT ANY OFFER FROM A CLEC?

4 A. No. The two Contract Service Arrangements do not restrict the customers from
5 considering and/or accepting any proposal for telecommunications services.
6

7 Q. DO THE CONTRACT SERVICE ARRANGEMENTS BIND THE CUSTOMER TO
8 PURCHASE SERVICES FROM BELL SOUTH FOR THREE YEARS?

9 A. No. The customers are completely free to order any services from any other party they
10 may choose. In addition, I would not characterize the customers as "bound" under the
11 Contract Service Arrangement. These are large, sophisticated business customers and
12 experienced negotiators. They have received and continue to receive other proposals for
13 telecommunications service and, by their signatures on these contracts, have stated their
14 belief that this Contract Service Arrangement to be in their company's best interest for
15 the next three years.
16

17 Q. DO THE CONTRACT SERVICE ARRANGEMENTS PROHIBIT CLECS FROM
18 MARKETING THEIR SERVICES TO THIS CUSTOMER FOR THREE YEARS?

19 A. No. Nothing in either Contract Service Arrangement restrains CLEC activities, nor is the
20 customer prohibited in any way from ordering and using telecommunications services
21 from any provider. In its response to BellSouth's Data Request, Item 7, NEXTLINK
22 states that it has not declined to serve any customer which is a party to Contract Service
23 Arrangement TN98-2766-00 because that customer was subject to a Contract Service

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 1999, a copy of the foregoing document was served on the parties of record, via the method indicated:

☒ Hand
☐ Mail
☐ Facsimile
☐ Overnight

Richard Collier, Esquire
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0500

☒ Hand
☐ Mail
☐ Facsimile
☐ Overnight

Henry Walker, Esquire
Boult, Cummings, et al.
414 Union Ave., #1600
P. O. Box 198062
Nashville, TN 39219-8062

☒ Hand
☐ Mail
☐ Facsimile
☐ Overnight

Jon Hastings, Esquire
Boult, Cummings, et al.
414 Union St., #1600
Nashville, TN 37219

☒ Hand
☐ Mail
☐ Facsimile
☐ Overnight

Charles B. Welch, Esquire
Farris, Mathews, et al.
511 Union St., #2400
Nashville, TN 37219

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

James Lamoureux, Esquire
AT&T
1200 Peachtree St., NE
Atlanta, GA 30309

☒ Hand
☐ Mail
☐ Facsimile
☐ Overnight

Vance Broemel, Esquire
Consumer Advocate Division
426 5th Avenue, N., 2nd Floor
Nashville, TN 37243

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

Carolyn Tatum Roddy, Esquire
Sprint Communications Co., L.P.
3100 Cumberland Circle, N0802
Atlanta, GA 30339

IX. TERMINATION LIABILITY

If [REDACTED] desires to terminate this V&T Agreement prior to its expiration, [REDACTED] must provide BellSouth written notice of such termination ninety (90) days prior to the effective date of termination. Termination liability will be in accordance with the following:

A. If written notice of termination is delivered to BellSouth to be effective at the end of a Contract Year, BellSouth will bill [REDACTED] the following termination charges:

(1) End of Contract Year 1 - \$350,000

(2) End of Contract Year 2 - \$350,000

B. If written notice of termination is delivered to BellSouth to be effective prior to the end of the current V&T Contract Year, BellSouth will bill [REDACTED] the appropriate termination charges calculated in A. above, in addition to an amount equal to the difference between the current Contract Year to date billing for V&T Eligible billing and the current year Minimum Annual Revenue Base.

C. The application of termination charges pursuant to this Section shall not affect the application of termination charges pursuant to the tariff or any other agreement.

E. Customer further acknowledges that it has options for its telecommunication services from providers other than BellSouth and that it has chosen BellSouth to provide the services described in this Agreement. Accordingly, Customer agrees that in the event it transfers this Agreement to an alternative local service provider, such transfer shall be deemed a termination of this Agreement and BellSouth shall bill [REDACTED] all appropriate termination charges applicable to a termination of the Agreement.

X. BUSINESS CHANGE

In the event of a Business Change as defined herein which significantly reduces the volume of network services required by [REDACTED] and those subsidiaries listed in Appendix III, with the result that [REDACTED] is unable to meet its Minimum Annual Revenue Base under this Agreement (notwithstanding [REDACTED]'s best efforts to avoid such a shortfall), BellSouth and [REDACTED] shall cooperate in efforts to develop a mutually agreeable alternative that will reduce [REDACTED]'s liability

1 Contract Service Arrangements are part of some grand scheme to lock up all of the
2 business customers and thwart the development of competition in the local market.

3
4 In fact, BellSouth's Contract Service Arrangements are evidence of thriving competition.
5 Every Contract Service Arrangement that BellSouth files with the TRA reflects a
6 competitive situation in which a customer benefited from competitive proposals that
7 lowered that customer's costs. Many other situations exist where the customer accepts a
8 competitive proposal from a CLEC instead of BellSouth.

9
10 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

11 A. Yes, it does.

agrees to reduce [REDACTED] Minimum Annual Revenue Base, the Annual Revenue Base and the corresponding Discount Levels to the extent of the shortfall resulting from the price reduction(s).

XIII. RATE ASSURANCE

A. If [REDACTED] is offered a service proposal from an unauthorized carrier that is comparable both in rate and in level of support provided by BellSouth for any V&T Eligible Service which is priced at least fifteen percent (15%) less than those provided to [REDACTED] by BellSouth then these services may be considered for a price reduction. [REDACTED] shall provide BellSouth written notice of the service proposal, and sufficient information to validate the terms and rates of the offer and the option to respond to the alternative proposal.

B. BellSouth shall respond, in writing, within seven (7) calendar days as to whether or not BellSouth will pursue a new rate for [REDACTED]. If BellSouth chooses to respond with a new rate offer, BellSouth will require an additional thirty (30) days to submit to [REDACTED] the new rate.

C. In the event BellSouth elects to respond to the offering from the alternative carrier and offers [REDACTED] a service proposal with rates that are within ten percent (10%) of the alternative carrier's competitive offering, this Agreement shall continue in effect at the new customized rate and charges until the expiration of the V&T Agreement. The parties shall amend the Minimum Annual Revenue Base, the Annual Revenue Base and the corresponding Discount Levels listed in Appendix II to reflect the rate reduction and any other portions of the Agreement necessary to effect this Rate Assurance Adjustment.

D. If BellSouth elects not to respond to the offer from the alternative carrier or does not offer [REDACTED] a service proposal with rates that are within ten percent (10%) of the alternative carrier's competitive offering, the parties shall amend Appendix IA, Appendix IB and Appendix II and any other pertinent provisions of this Agreement as necessary to reduce [REDACTED]'s Minimum Annual Revenue Base, the Annual Revenue Base and the corresponding Discount Levels listed in Appendix II, if necessary, to permit [REDACTED] to purchase the services in question from the alternative carrier.

XIV. ANNUAL TRUE-UP

1 Q. HOW CAN A CLEC RESELL A CSA IF THE TERMS AND CONDITIONS OF THE
2 CSA ARE "SECRET," AS SOME INTERVENORS HAVE ALLEGED?

3 A. Until recently, BellSouth filed copies of the Contract Service Arrangements as supporting
4 documentation with its tariff filings at the Tennessee Regulatory Authority under a
5 protective agreement. This was necessary to protect the customers' interests, and plain
6 language in the tariff stated that these additional terms and conditions (additional to those
7 stated in the tariff itself), would be made available to interested customers. However,
8 BellSouth recently reached an agreement with the TRA Staff under which BellSouth will
9 file copies of the Contract Service Agreement as public information in the tariff filing
10 package. Only specific references to the customer will be redacted. Therefore, all terms
11 and conditions in filings for BellSouth's Contract Service Arrangements will be part of
12 the public record and available to any CLEC interested in reselling that CSA.

13
14 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

15 A. BellSouth's CSAs should be approved because they are reasonable, consistent with
16 Tennessee law, and allow the customers involved to enjoy the benefits of competition –
17 namely, lower prices. None of the terms and provisions of these Contract Service
18 Arrangements are anticompetitive or discriminatory. BellSouth has also taken steps,
19 reflected in these Contract Service Arrangements, to address TRA concerns regarding
20 length of the contract and termination charges to the extent that the customers agreed
21 with these changes. In addition, the relatively small percentage of business revenue
22 provided by Contract Service Arrangements, and the microscopic percentage of business
23 customers with a Contract Service Arrangement completely refute the notion that

1 Arrangement with BellSouth. In its response to Item 10, NEXTLINK states that it has
2 not declined to serve any customer which is a party to Contract Service Arrangement
3 KY98-4958-00 because that customer was subject to a Contract Service Arrangement
4 with BellSouth.

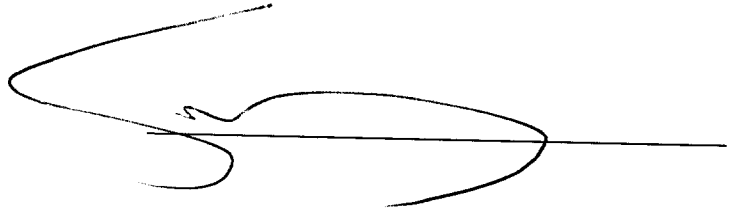
5
6 Q. DO YOU AGREE THAT THE LENGTH AND TERMINATION PROVISIONS OF
7 THESE CSAs EFFECTIVELY PRECLUDE CLECS FROM COMPETING FOR
8 THESE CUSTOMERS' BUSINESS?

9 A. Absolutely not. First, as previously indicated, these CSAs do not prevent any CLEC
10 from continuing to compete for the customer's business. The CSA simply allows the
11 customer to enjoy a specified discount off eligible services depending upon the
12 customer's billings with BellSouth.

13
14 Second, all CSAs in Tennessee are available for resale, consistent with the decision of the
15 Arbitrators in the AT&T and MCI Arbitration Dockets, 96-01152 and 96-001271
16 respectively. As a result, after BellSouth has implemented a CSA with a customer, a
17 CLEC can turn around and offer service to the same customer simply by reselling the
18 CSA (and obtain a substantial discount in the process). A CLEC's ability to resell a CSA
19 is not affected by the length of the Contract Service Arrangement or the termination
20 liability provisions. BellSouth has modified its standard contract language to clearly
21 indicate that the customer will not be responsible for a termination charge in the event
22 that either of the CSAs is resold by a CLEC.

☒ Hand
☐ Mail
☐ Facsimile
☐ Overnight

Val Sanford, Esquire
Gullett, Sanford, et al.
230 4th Ave., N., 3rd Fl.
P. O. Box 198888
Nashville, TN 37219-8888

A handwritten signature in black ink, appearing to be 'Val Sanford', written over a horizontal line.

AFFIDAVIT

STATE OF: Tennessee
COUNTY OF: Davidson

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Randall L. Frame-Sales Manager, BellSouth Business Systems, BellSouth Telecommunications, Inc., who, being by me first duly sworn deposed and said that:

He is appearing as a witness before the Tennessee Regulatory Authority in Docket No. 98-00559, 99-00210 and 99-00244 on behalf of BellSouth Telecommunications, Inc., and if present before the Authority and duly sworn, his testimony would be set forth in the annexed testimony consisting of 24 pages and 3 exhibit(s).

Randall L. Frame

Randall L. Frame

Sworn to and subscribed
before me this 23rd
day of July, 1999

Carolyn Hanesworth
NOTARY PUBLIC

My Commission Expires
1.27.2001